

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 29 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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CC Docket No. 95-72

End User Common Line  
Charges

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**COMMENTS OF THE COMMERCIAL INTERNET  
EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association ("CIX"), by its attorneys, respectfully submits these comments in response to the Commission's Notice for Proposed Rulemaking ("NPRM") in the above-referenced docket. The Commission seeks comment on its policy of requiring subscriber line charges ("SLCs") based on the number of "derived" channels provided to an end user through Integrated Services Digital Network ("ISDN"). CIX applauds the Commission's efforts to untangle this complicated issue and looks forward to a resolution that allows competition between providers, and between industries, to flourish.

CIX is a non-profit organization with a membership of 160 Internet service providers. It operates to facilitate global connectivity among commercial independent Internet service providers throughout the world. CIX works to foster fair and open environments for Internet commercialization and interconnection, and provides a forum for the exchange of experiences and ideas to enhance the vitality of the IISP industry. CIX members use various forms of transport to connect subscribers to the Internet, including traditional business lines, private lines, ISDN, ATM, SMDS and Frame Relay.

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As an initial matter, CIX notes that the Commission's NPRM assumes that implementation of ISDN, and a "physical line" approach to SLC charges, may result in a reduction of SLC support payments for non-traffic sensitive costs of the local loop. NPRM at ¶ 18. CIX believes that the Commission should study this assumption carefully. It may be that, even as ISDN is implemented, the total number of physical lines is not materially diminished, and so there is no real danger to universal service in the switched voice market. CIX believes that the economic effect of ISDN on total SLC support payments needs to be thoroughly examined before the Commission attempts to add regulatory charges on the LEC's provision of ISDN.

In its NPRM, the Commission noted that it must "avoid erecting regulatory barriers to the development of beneficial new technologies" but at the same time it "should not amend our rules to favor new technologies and services simply because they are new." NPRM, at ¶ 17. CIX also supports these goals. Unfortunately, SLCs based upon derived channels, as described in the NPRM at ¶ 31, may result in both regulatory disincentives to innovate and disadvantages to ISDN as compared to other competing technologies.

The development of new technologies will be hindered because it essentially imposes a tax on the innovation and investment that went toward the development of ISDN. Research and development efforts toward even more efficient transport technologies (*e.g.*, SMDS, ATM, and Frame Relay) will suffer from a regulatory approach that increases the SLC burden in direct proportion to the number of derived channels.

Moreover, SLCs based on derived channels will have the effect of inordinately taxing data and other enhanced services, including Internet access service. It seems self-evident that customers ordering PRI ISDN, for example, will often use the additional channel capacity for data and enhanced services. For the customer, applying a

SLC to every derived channel increases the cost of those services. CIX recognizes that the Commission is attempting to balance many factors, including the maintenance of IXC access charges and continued support for the non-traffic sensitive costs of the local loop. However, achieving this balance by indirectly raising the costs of providing enhanced services is contrary to the Commission's commitment to avoid regulatory burdens on such services.<sup>1</sup> Raising the costs, or skewing the market, for advanced transport services also threatens the growth of the National Information Infrastructure, including Internet services.

The continuation of the approach taken in the NYNEX Reconsideration Order<sup>2</sup> will also create market anomalies. If ISDN becomes subject to multiple SLCs and more expensive relative to alternative data networking services (e.g., SMDS, ATM, and Frame Relay), the Commission's policy will discourage the use of ISDN and push customers toward less costly alternatives. This result will not only frustrate the Commission's goal of regulatory parity of technologies, NPRM, at ¶ 17, it will also prevent end-users from making economically efficient decisions. Further, IXC providers of PRI ISDN compete with the LEC ISDN services; an additional regulatory cost on the

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<sup>1</sup> See Second Computer Inquiry, 77 F.C.C. 2d 384, 433 (1980), *modified*, Memorandum Opinion and Order, 84 F.C.C. 2d 50, *aff'd*, Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.*, Louisiana Public Service Commission v. FCC, 461 U.S. 938 (1983). We also note that increases in access charges for enhanced services have met with great public resistance in the past. See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, 2 FCC Rcd. 4305 (1987); Order, 3 FCC Rcd. 2631 (1988).

<sup>2</sup> NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1, Transmittal No. 116, Order on Reconsideration, 10 FCC Rcd. 2247 (1995).

LEC's service will only encourage customers to switch to competitive providers, which may exacerbate universal service concerns.

CIX believes that SLCs based on derived channels do not adequately address the reality of an environment in which there are numerous access and transport mechanisms based on a variety of technology. In reviewing the comments in this proceeding, CIX urges the Commission not to adopt a derived channel approach to SLCs and base the charge instead upon a more competitive measure.

Respectfully submitted,

THE COMMERCIAL INTERNET  
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Date: June 29, 1995